Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

77-79

No.

In the Supreme Court of the United States

OCTOBER TERM, 1977

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PETITIONER
v.
CHILDREN'S HOSPITAL OF PITTSBURGH

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

WADE H. McCREE, Jr.,
Solicitor General,
Department of Justice,
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v.

CHILDREN'S HOSPITAL OF PITTSBURGH

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The Solicitor General, on behalf of the Equal Employment Opportunity Commission, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. C, *infra,* pp. 15A–20A) is not officially reported. The decision of the district court (App. B, *infra,* pp. 1A–13A is reported at 415 F. Supp. 1345.

JURISDICTION

The Judgment of the court of appeals (App. D, *infra,* pp. 19A–20A) was entered on May 19, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether denial of the use of earned accrued sick leave for female employees' pregnancy-related disabilities violates Title VII of the Civil Rights Act of 1964.

STATUTE INVOLVED

Section 703(a) of Title VII of the Civil Rights Act of 1964, 78 Stat. 255, as amended, 42 U.S.C. (and Supp. V) 2000e–2(a), provides in pertinent part:

> It shall be an unlawful employment practice for an employer—
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; * * *.

STATEMENT

On May 22, 1975, the Equal Employment Opportunity Commission initiated this action in the Western District of Pennsylvania alleging that the Children's Hospital of Pittsburgh discriminated against its female employees on the basis of sex by maintaining discriminatory maternity leave policies.[1] This action resulted from a charge filed with the Commission on May 1, 1973, by Harriet Baum, a former hospital employee, alleging that the Hospital was violating Title VII by not paying Baum and other similarly situated female employees their accumulated sick leave for childbirth and the period prior and following childbirth during which they were medically unable to work.

[1] The facts are set forth in detail in the opinion of the district court (App. A, *infra*, pp. 1A–11A).

Ms. Baum, who had worked at the Hospital as a child development specialist since August 1968, had requested a five-month pregnancy-related leave to commence after she had exhausted her sick leave and vacation time. She was informed, however, that the Hospital did not pay sick leave for pregnancy-related disability.

Ms. Baum worked until July 20, 1973, four days before the birth of her child, at which time she had accrued 20.75 days of sick leave and 30 days of vacation time. She was paid for her vacation time, but not for her accumulated sick leave.

The district court ruled that "any sick leave policy which treats pregnant women differently than employees with other sicknesses or disabilities is sex discrimination in violation of Title VII, since pregnancy is only common to women" (App. A, *infra*, pp. 5A–6A). Finding that there was no legitimate nondiscriminatory reason for prohibiting female employees from using their accumulated sick leave during a pregnancy-related disability, and that Ms. Baum incurred a temporary disability after the birth of her child, the court ruled that she was entitled to have her accumulated sick leave applied prior to the commencement of her leave of absence without pay. The court awarded her $861.87—the value of her accumulated sick leave

at the time she left her employment—and interest from the date of the violation and enjoined the Hospital "from denying any female employee from using accumulated sick days for any pregnancy related or childbirth disability upon proof and application of same" (App. B, *infra*, p. 13A).

The court of appeals, in a *per curiam* opinion, reversed on the authority of *General Electric Co.* v. *Gilbert*, 429 U.S. 125.

ARGUMENT

The question presented is currently before this Court in two other cases, *Satty* v. *Nashville Gas Co.*, 522 F. 2d 850 (C.A. 6), certiorari granted, No. 75–536, January 25, 1977, and *Berg* v. *Richmond Unified School District*, 528 F. 2d 1208 (C.A. 9), certiorari granted, No. 75–1069, January 25, 1977. As the respondent in No. 75–1069 argues, the decision in *General Electric Co.* v. *Gilbert*, 429 U.S. 125, holding that the exclusion of a pregnancy-related disability from a company's disability insurance plan did not violate Title VII, is not controlling as to sick leave, which is an earned benefit from actual employment and which can be used for all other temporary disabilities.

This petition is filed to protect the rights of the charging party and respondent's other employees who may be affected by its sick leave pregnancy policy. Because *Satty* and *Berg* adequately present the question to be resolved here, the Court may wish to hold this case pending its decision in those cases.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

ABNER W. SIBAL,
General Counsel,
JOSEPH T. EDDINS,
Associate General Counsel,
BEATRICE ROSENBERG,
GARY T. BROWN,
Attorneys,
Equal Employment Opportunity Commission.

JULY 1977.

APPENDIX A

In the United States District Court for the Western District of Pennsylvania

Civil Action No. 75–627

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PLAINTIFF

v.

CHILDREN'S HOSPITAL OF PITTSBURGH, DEFENDANT

OPINION

WALLACE S. GOURLEY, *Senior Judge:*

This is a civil rights proceeding filed by the plaintiff, Equal Employment Opportunity Commission, against the defendant, Children's Hospital of Pittsburgh, in behalf of Harriet Baum and all other similarly situated female employees of the defendant hospital for alleged violations of the Civil Rights Act, more particularly, Sections 703(a) and 704(a) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C.A. § 2000(e) et seq. The court has held a full and complete trial in this proceeding and afforded counsel every opportunity to present any and all evidence, oral or documentary in nature, to support their respective positions.

The facts may be briefly stated. Harriet Baum, a female, was first employed by the defendant, Children's Hospital, as a growth and developmental spe-

cialist in its Developmental Clinic, on August 7, 1968. Throughout her employment with the Children's Hospital, Harriet Baum worked thirty hours per week and was granted vacation pay and sick pay in amounts equal to three quarters to those granted to full-time employees.

When Mrs. Baum learned of her pregnancy in January of 1973, she immediately notified her supervisor, Dr. Grace Gregg, of her condition and communicated her desire to return to work following a leave of absence. Mrs. Baum also sought and requested of defendant to have her unpaid leave of absence begin at the end of her accumulated sick days and vacation days. Suffice to say, Mrs. Baum was subsequently informed that her leave of absence was approved; however, her request to have her accumulated sick days used up prior to the beginning of her leave of absence was denied as being contrary to hospital policy. Thereafter, on May 10, 1973, Harriet Baum filed with the Equal Employment Opportunity Commission a charge against the defendant alleging discrimination through its denial to permit her to use the accumulated sick leave for a maternity related disability.

Mrs. Baum remained in the defendant's employ until July 20, 1973, just four days prior to the birth of her daughter on July 24, 1973. Since Mrs. Baum did not begin her maternity leave until August 21, 1973, at the conclusion of her vacation days, she was not scheduled to return to work until November 30, 1973. Accordingly, Mrs. Baum contacted the defendant in the early part of November, 1973, indicating that she was willing and ready to return to work at the conclusion of her maternity leave which was to have ended on November 30, 1973. However, on November 23, 1973, Mrs. Baum received a letter from

defendant notifying her that due to economic cuts in the hospital's budget, her position as a growth and developmental specialist had been eliminated and that her services at the hospital were no longer required. This notice and action by the defendant prompted Mrs. Baum to file a second charge with the Equal Employment Opportunity Commission on November 26, 1973, alleging that her discharge was due to the previous charge filed against the defendant with the Equal Employment Opportunity Commission.

It is the plaintiff's contention that the defendant hospital's policy of prohibiting female employees to use their accumulated sick leave for pregnancy or child-birth related disabilities discriminated against women employees in violation of Title VII.

Defendant, on the other hand, asserts that this policy is not in violation of Title VII in that sick leave is not a part of wages or salary and that said "sick leave policy" is administered and applied upon the same terms and conditions to all employees, male or female, pregnant or not. More particularly, that no employee is permitted to schedule sick days prior to the actual date of illness and that sick days can only be applied when an employee is scheduled to work.[1]

The court is satisfied after a full and complete trial and after considering the briefs and arguments of

---

[1] Defendant at the outset seeks to dismiss part of plaintiff's claim on the basis that defendant was not served with the notice of charge within twenty days as set forth in Section 706(b) of Title VII. The court does not believe in the instant proceeding that the defendant was prejudiced in anyway whatsoever and does not believe that procedural niceties should be able to impede a Title VII claimant from obtaining a judicial hearing on the merits. *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36 (1974); *Wetzel* v. *Liberty Mutual Insurance Co.*, 95 Supreme Court 1989; 511 F. 2d 199 (1975).

counsel that the defendant's sick leave policy which prohibited Harriet Baum from using her accumulated sick leave prior to commencing her leave of absence was discriminatory and in violation of Title VII. The principal aim of Title VII is to protect employees from any form of disparate treatment because of, inter alia, sex, absent a compelling and founded reason for such disparity. Civil Rights Act of 1964, as amended, § 701 et seq.; 42 U.S.C.A. § 2000(e) et seq.

The law with respect to rights of the pregnant employee is becoming most firm and definite and consistent with the teachings of *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), the court has accorded great deference to the Commission's guidelines as providing the proper interpretation of Title VII.

> "Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities." Employment Policies Relating to Pregnancy and Childbirth, 29 C.F.R. § 1604.10(b) (1972).

The United States Court of Appeals for the Third Circuit, in *Liberty Mutual Insurance Company* v. *Wetzel,* 95 Supreme Court 1989; 511 F. 2d 199 (3rd

Cir. 1975) (vacated and remanded on other grounds), affirmed the District Court's decision on the merits in which it was found that the insurance benefits and maternity leave regulations of the employer, Liberty Mutual, discriminated against women in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. § 2000(e) et seq. The employer, Liberty Mutual, had excluded maternity benefits from its income protection plan and the court viewed this type of practice as treating persons in a disparate manner. The court went on to state:

> "* * * We believe that pregnancy should be treated as any other temporary disability. Employers offer disability insurance plans to their employees to alleviate the economic burdens caused by the loss of income and the incurrence of medical expenses that arise from the inability to work.
>
> "A woman, disabled by pregnancy, has much in common with a person disabled by a temporary illness. They both suffer a loss of income because of absence from work; they both incur medical expenses; and the pregnant woman will probably have hospital expenses while the other person may have none, choosing to convalesce at home.
>
> "Thus pregnancy is no different than any other temporary disability under an income protection plan offered to help employees through the financially difficult times caused by illness."

In light of the expressions set forth in *Wetzel,* supra., the court is convinced that logic and justice require the conclusion that any sick leave policy which treats pregnant women differently than employees with other sicknesses or disabilities is sex discrimination in violation of Title VII, since pregnancy is only

common to women.[2] The mere fact that defendant applied its sick leave policy equally to male, female, pregnant, nonpregnant employees is of no consequence if in the administration of said policy a protected class of employees is affected in a disparate manner. *Griggs* v. *Duke Power Co.*, supra., *Wetzel,* supra. Pregnancy and childbirth, which is common only to women, for all practical intents and purposes becomes a temporary disability at some point in time and it is just not practical or realistic to treat said disability differently than any other sickness or disability. Moreover, the court in reviewing the record could find no basis in which to conclude that there was a legitimate nondiscriminatory reason for prohibiting female employees from using their accumulated sick leave during a pregnancy related disability.

The court is satisfied that in the instant proceeding Mrs. Baum was in fact laboring under a temporary disability after the birth of her child and that she was entitled to have her accumulated sick leave used up prior to the commencing of her maternity leave of absence.[3] See also: *Zichy* v. *City of Philadelphia,* 9

[2] The defendant seems to feel that the United States Supreme Court decision in *Geduldig* v. *Aiello*, 417 U.S. 484 (1974) is dispositive of the issue in this proceeding, however, the United States Court of Appeals for the Third Circuit in *Wetzel*, supra., has already reviewed the application of *Aiello* to Title VII cases involving unlawful sex discrimination relating to pregnancy disability and found it not to be controlling. See also: *Satty* v. *Nashville Gas Co.*, 522 F.2d 850 (6th Cir., 1975); *Holthaus* v. *Compton and Sons*, 514 F.2d 651 (8th Cir. 1975); *Gilbert* v. *General Electric Co.*, 519 F.2d 661 (4th Cir. 1975); *Communications Workers of America* v. *American Telephone and Telegraph Company*, 513 F.2d 1024 (2d Cir. 1974).

[3] At the time Harriet Baum went on maternity leave she had accumulated 20.75 or 166 hours of sick leave and her salary was 5.19 per hour or $155.70 per thirty hour week of employment.

E.P.D. ¶ 10211 (E.D. Pa. 1975), where the court held that the denial of sick leave to the employee disabled because of pregnancy or childbirth institutes a different treatment of that employee's needs than those of the employee otherwise disabled but without a rational basis for such distinction.[4] Citing *Wetzel,* supra., the court held:

> "While Wetzel dealt with an income protection plan, we believe the same reasoning applies readily to a sick leave plan. Such plans are instituted to alleviate the hardship which would otherwise befall an employee temporarily physically disabled from working. The employee disabled from pregnancy or childbirth has just as much need for such protection as the employee disabled because of strictly defined illness or injury. Denial of sick leave to the employee disabled because of pregnancy or childbirth thus constitutes different treatment of that employee's needs than those of the employee otherwise disabled, but without rational basis for such distinction.
>
> "Indeed, we would note that an employee stands to lose far more by not having use of a sick leave plan like that involved here than an income protection plan like that involved in *Wetzel.* Whereas the income protection plan preserves only a portion of the employee's pay, the absent employee under the city's sick leave plan here continues not only to receive his full salary, but also to accrue future sick leave as well as time for pension, vacation, promotional, and anniversary date purposes, and other fringe benefits. If the 'illness/non-illness' rationale cannot justify the difference in treatment involved in the income protection plan in *Wetzel,* even less can it justify the substan-

[4] For similar holdings in other circuits see: *Satty* v. *Nashville Gas Co.*, 522 F. 2d 850 (6th Cir. 1975); *Berg* v. *Richmond Unified School District*, 528 F. 2d 1208 (9th Cir. 1975).

tially greater difference in treatment which the sick leave plan here in issue involves."

The plaintiff also seeks relief for all other similarly situated female employees of defendant who were pregnant between July 10, 1971 and the present. However, the only evidence introduced by plaintiff to support this claim, consisted of a stipulation that the personnel records of those individuals listed contained a reference to either maternity or pregnancy as the reason for beginning their leave of absence or terminating their employment and a list of those individuals alleged to be in the same posture as Harriet Baum. This list contained the following information relative to their claim: Pertinent Date of Hire; Date of Termination or Commencement of Leave of Absence; Hourly Salary at Date of Termination or Commencement of Leave of Absence; Accumulated Unused Sick Days (the Day Represents 8 hours) at Date of Termination or Commencement of Leave of Absence; and Date Returned to Work.

For reasons which will now be discussed, the court is satisfied that the granting of defendant's Motion to Dismiss as to all claims against defendant other than those presented by Harriet Baum was proper.

Pregnancy, in and of itself, is not a disability. To require the defendant to pay the full amount of accumulated sick leave to each pregnant employee who terminated her employment or who went on a leave of absence without more would be most unjust. Sick leave benefits only accrue where the individual is laboring under some sickness or disability.[5] Un-

[5] The only exception, which is not applicable in this instant, is where an employee may be paid sick days from accumulated sick time on a physicians appointment even if not actually sick at that time if said employee had more than sixty accumulated sick days.

questionably, a pregnant woman, at some point in time, will suffer some temporary disability as a result of her pregnancy, thereby, entitling her to the right to have her sick leave benefits while she remains under that disability. However, the court is not permitted to speculate as to when this condition will occur or how long said disability will last. The case of every woman is different and, therefore, before a woman is entitled to have the benefit of the accumulated sick leave applied to a pregnancy related disability there must be some evidence as to when and how long the individual actually labored under said disability.

Very simply, the court is not sufficiently informed as to whether any of the individuals listed were in fact sick or disabled and if so, when and for how long. In view thereof, the court is of the considered opinion that the plaintiff has failed to establish that those employees listed were in fact similarly situated to Harriet Baum.

Finally, the court can find no merit to plaintiff's contention that Harriet Baum was discharged from her employment in retaliation for her filing charges for discrimination with the Equal Employment Opportunity Commission.[6] The record reflects that Mrs. Baum's leave of absence was to have expired on November 30, 1973 and that on November 23, 1973, she received a phone call from defendant advising her that her position at the clinic had been eliminated because of a cut in monies which the hospital was to have received from the Allegheny County Mental Health/Mental Retardation Program to operate the Developmental Clinic. Even after a full and fair op-

[6] Section 704(a) of Title VII, 42 U.S.C.A. § 2000(e)-3(a) makes it unlawful to discharge an employee because of his opposition to practices made unlawful by the Act.

portunity had been afforded to the plaintiff, the court is unpersuaded that Mrs. Baum's termination by defendant was in retaliation for her voicing opposition to the hospital's sick pay policies and the filing of a charge with the Equal Employment Opportunity Commission.

The court is satisfied that under all the facts and circumstances defendant's decision to terminate some of its personnel to accommodate for the cut in funding was done for a justifiable economic reason, and the court can find nothing in the record to support plaintiff's contention that defendant's reason for dismissing Mrs. Baum was pretextual. Although the record reflects that the defendant hospital did not experience as great a cut in funding as it had expected, this fact was not known to the defendant at the time the positions were eliminated in the Growth and Developmental Clinic. Defendant hospital terminated Mrs. Baum's position on the good faith and belief that their funding had been reduced and it was not until sometime subsequent to her termination that defendant was informed that part of their funding had been restored. Very simply, the court is convinced that after a most careful review of the record, that there is no basis upon which the court can conclude that the termination of Mrs. Baum was the result of retaliation on the part of the defendant. On the contrary, the record reflects that the sole basis for defendant's actions was founded on economic considerations.

Accordingly, the court can find no basis for the awarding of any damages or back pay since Mrs. Baum's termination was not the result of retaliation on the part of defendant.

In view thereof, Harriet Baum is entitled to receive payment for her accumulated sick days as computed below:

166 hours (accumulated sick days in hours for 1973)

×

5.109 (rate of pay per hour in 1973) = $861.87

Findings of fact and conclusions of law have not been separately stated but are included in the body of the foregoing opinion as specifically authorized by Rule 52(a) of the Federal Rules of Civil Procedure.

An appropriate order is entered.

ORDER

AND NOW, this 30th day of June, 1976, judgment is hereby entered in favor of Harriet Baum only and against the defendant, Children's Hospital of Pittsburgh, for payment of accumulated sick days in the amount of $861.87 with interest at the rate of 6% from the date she officially began her leave of absence.

IT IS FURTHER ORDERED AND DECREED that judgment is hereby entered in favor of the defendant, Children's Hospital of Pittsburgh, and against the plaintiff, Equal Employment Opportunity Commission, for any and all claims presented in behalf of those persons other than Mrs. Harriet Baum.

WALLACE S. GOURLEY,
Senior District Judge.

APPENDIX B

In the United States District Court for the
Western District of Pennsylvania

Civil Action No. 75–627

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
PLAINTIFF

v.

CHILDREN'S HOSPITAL OF PITTSBURGH, DEFENDANT

SUPPLEMENTAL ORDER

AND NOW, this 1st day of July, 1976, the court, through an apparent oversight, failed and neglected to refer in its order of June 30, 1976 to make any reference to plaintiff's request for injunctive relief.

IT IS FURTHER ORDERED AND DECREED that Children's Hospital, its officers, agents, employees, successors, assigns and all persons in active concert or participation with it, are hereby permanently enjoined from denying any female employee from using accumulated sick days for any pregnancy related or childbirth disability upon proof and application of same.

WALLACE S. GOURLEY,
Senior District Judge.

APPENDIX C

United States Court of Appeals For the Third Circuit

Nos. 76-2321 and 76-2322

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

v.

CHILDREN'S HOSPITAL OF PITTSBURGH

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
APPELLANT IN NO. 76-2321

CHILDREN'S HOSPITAL OF PITTSBURGH,
APPELLANT IN NO. 76-2322

(D.C. CIVIL ACTION NO. 75-627)

On Appeal From the United States District Court for the Western District of Pennsylvania

Submitted Under Third Circuit Rule 12(6)
May 3, 1977

Before GIBBONS AND HUNTER, *Circuit Judges,* and LAYTON,* *District Judge*

*CALEB R. LAYTON, 3rd, United States District Judge for the District of Delaware, sitting by designation.

Abner W. Sibal, General Counsel.

Joseph T. Eddins, Associate General Counsel.

Beatrice Rosenberg, Assistant General Counsel.

Gary T. Brown, Attorney, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20506.

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Attorneys for Children's Hospital of Pittsburgh.

PER CURIAM

Children's Hospital of Pittsburgh (the "Hospital") appeals from an order granting class injunction relief and money damages to an individual victim of alleged sex discrimination in the denial of sick leave for pregnancy-related disabilities. The Equal Employment Opportunity Commission (the "EEOC") appeals from the portion of that order denying monetary relief to the class. The suit by the EEOC charges that the Hospital's policy of prohibiting female employees to use their accumulated sick leave for pregnancy-related disabilities violates Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000(e) et seq. The district court agreed. However, after the EEOC filed its initial appellate brief the Supreme Court decided *General Electric Company* v. *Gilbert,* — U.S. — (1976), 45 U.S.L.W. 4031 (U.S. Dec. 7, 1976), holding that the exclusion of pregnancy-related disabilities from a disability plan does not

violate Title VII. That decision is controlling. It requires the reversal of the district court's judgment granting class injunctive relief and money damages to the charging party, and the affirmance of the denial of monetary relief to the class.

After the decision in *Gilbert* and before the Hospital's brief was due, its attorney called the case to the EEOC's attention and urged that the appeal be disposed of by a mutual agreement which would dissolve the injunction and terminate all damage claims. The EEOC elected to go forward with the appeal, necessitating the expenditure of additional time and effort on the part of the Hospital's attorney. In a reply brief the EEOC attempts to distinguish *Gilbert;* a distinction we find unpersuasive. The Hospital urges that, in light of *Gilbert,* the EEOC's refusal to discontinue this appeal was vexatious, and accordingly seeks an award of attorney's fees for time and effort expended since the *Gilbert* decision was announced.

In *United States Steel Corporation* v. *United States* 519 F.24 359 (3d Cir. 1975), we held that attorney's fees could be awarded against the EEOC under § 706(k) of Title VII,[1] at least in cases where a proceeding was maintained in bad faith. We cited with approval the holding of the Ninth Circuit in *Van Hoomissen* v. *Xerox Corp.,* 503 F.2d 1131 (9th Cir. 1974), approving such awards in cases of vexatious appeals. But although we have found the EEOC's effort to distinguish *Gilbert* to be unpersuasive, we cannot say that the effort was made vexatiously or in bad faith. Certainly there are factual differences between the benefit plan considered in *Gilbert* and that of the Hospital. In pointing out those differences the EEOC did no more than might be expected of a con-

[1] 42 U.S.C. § 2000e–5(k).

scientious litigant charged with the duty of advancing the policies of Title VII. Thus we will deny the Hospital's fee application.

The judgment of the district court will be reversed insofar as it awards class injunctive relief and damages to the charging party, and affirmed insofar as it denies monetary relief to the class of female employees. Costs taxed in favor of Children's Hospital of Pittsburgh.

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

APPENDIX D

United States Court of Appeals for the Third Circuit

Nos. 76-2321/76-2322

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
APPELLANT IN NO. 76-2321

v.

CHILDREN'S HOSPITAL OF PITTSBURGH,
APPELLANT IN NO. 76-2322

(D.C. CIVIL ACTION NO. 75-627)

On Appeal From the United States District Court for the Western District of Pennsylvania

Present: GIBBONS and HUNTER, *Circuit Judges* and LAYTON, *District Judge**

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Western District of Pennsylvania and was submitted under Third Circuit Rule 12(6) on May 3, 1977.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, filed June 30, 1976 as amended July 1, 1976 be, and the same is hereby reversed insofar as it awards class injunctive relief and damages to the charging party, and affirmed insofar as it denies monetary relief to the class of female employees.

Costs taxed in favor of Children's Hospital of Pittsburgh.

Attest:

[s] THOMAS F. QUINN,
Clerk.

MAY 19, 1977

*Caleb R. Layton, 3rd, United States District Judge for the District of Delaware, sitting by designation.